IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 420 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

KOHINOOR FLOUR MILLS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 420 of 1992
MR B.B.NAIK for Petitioner
SERVED BY RPAD - (N) for Respondent

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 03/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinion of this Court under Section 256(1) of the Income-Tax Act, 1961 (the Act), at the instance of the Commissioner of Income-tax, Baroda :

> "(1) Whether the Tribunal is right is right in law and on facts in deleting the additions made by the ITO in respect of the capital gains arising out of acquisition of land when the physical possession of the land was given by the Baroda Municipal Corporation on 8.2.1967?"

2. In light of the fact that the aforesaid question contained typographical error, the question has been re-framed as under to bring out the correct controversy :

> "(1) Whether the Tribunal is right in law and on facts in deleting addition made by the ITO in respect of capital gains arising out of acquisition of law when physical possession of the land was given to the Baroda Municipal Corporation on 8th February 1967?"

3. The assessment year is 1967-68 and the relevant accounting period is year ended on 31st March 1967. It appears that the assessee Company was holding part of land comprised of one Bansidhar Mill's estate. Out of the said parcel of land, the land bearing survey No.682 of Baroda kasba was acquired by Baroda Municipal Corporation. According to the Income-tax Officer, the assessee was liable to be taxed on capital gains arising on such acquisition in the assessment year under consideration and accordingly, he made an addition to the tune of Rs.1,99,000/- as capital gains after deducting the cost of land from the compensation received by the assessee.

4. The assessee carried the matter in appeal before the C.I.T. (Appeals), who allowed the appeal vide order dated 24th December 1987. The case of the assessee was that possession was taken over by Baroda Municipal Corporation on 8th February 1967, but notification under Section 4 of the Land Acquisition Act, 1894 was issued on 9th April 1967 and published in the government gazette on

28th April 1967, and hence, capital gains, if any, would arise only in the subsequent assessment year. The C.I.T. (Appeals) accepted this contention holding that the possession taken over by the Baroda Municipal Corporation of the land on 8th February 1967 as per private negotiation would not amount to a lawful transfer of land to the Corporation and hence, the compensation could not be brought to tax in the year under consideration. Accordingly, he deleted the addition made by the Income Tax Officer. The Tribunal confirmed the order of C.I.T. (Appeals) vide its order dated 1st August 1991 and dismissed the appeal filed by the revenue.

5. Mr.B.B.Naik, the learned Standing Counsel for the applicant revenue has been heard. Though served, there is no appearance on behalf of the assessee.

6. The facts, as found by the Tribunal, are not in dispute. Admittedly, Baroda Municipal Corporation took possession of the land on 8th February 1967 after private negotiation, and before the notification under Section 4 of the Land Acquisition Act was issued on 9th April 1967. In these circumstances, the question as to when the liability to capital gains tax would arise is no longer res integra. This Court in case of Commissioner of Income-Tax, Gujarat II v. Purshottambhai Maganbhai Hatheesing)HUF), 156 ITR 150, while dealing with almost identical controversy, held that a transfer is effected when possession is taken over pursuant to an award under the provisions of the Land Acquisition Act, since under Section 11 of the Land Acquisition Act, on an award being made, the property vests in the government free from all encumbrances. It is equally well settled that a transaction is exigible to capital gains tax only in the year in which an asset is transferred as laid down in Section 45 of the Act.

7. Therefore, in the present case, the Tribunal and the C.I.T. (Appeals) were justified in holding that there was no effective transfer during the accounting period relevant to the assessment year under consideration and as a consequence, the assessee was not liable to capital gains tax. The question referred for opinion is, therefore answered in favour of the assessee and against the revenue.

8. The Reference stands disposed of accordingly. There shall

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

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